

**Statement of Chairman Charles E. Schumer -- Rules Committee Hearing
September 22, 2010**

Examining the Filibuster: Legislative Proposals to Change Senate Procedures

The Rules Committee shall come to order. Good morning. I would like to thank my friend, Ranking Member Bennett, and my other colleagues present for participating in this legislative hearing, the fifth in our series of hearings to examine the filibuster. I also want to thank our first panel, Senator Harkin and Senator Udall, for agreeing to be witnesses today.

It is clear that the topic of the right to debate and the use of the filibuster are of deep interest to Members of this Committee. Only yesterday afternoon, several Republican colleagues participated in a thoughtful and wide-ranging discussion of these issues on the Senate floor after the vote on the motion to proceed to the Defense Authorizations bill failed.

We will be having a sixth filibuster hearing at 10:00 a.m., next Wednesday, to examine specific ideas related to encouraging debate as well as reducing unnecessary delays. One of the issues that we will cover in that hearing is one they raised during their colloquy – the issue of limiting debate through the procedure known as “filling the amendment tree.”

I appreciate the participation of Senators Bennett, Alexander, Roberts and others who have attended these hearings and provided their comments and input. They have raised important issues during our discussions, as have the Democratic Members of this Committee. I hope we will work together to find ways to improve the functioning of this institution.

My own view is that while this session has seen its share of milestone moments, it has also seen the filibuster become the norm, not the exception. Even motions to proceed are routinely blocked, stopping debate before it can ever begin.

I believe that to the public, a filibuster is NOT supposed to mean endless debate. Today it essentially means no debate at all.

Just yesterday, we failed to even proceed to debate on the substance of the Defense Authorization bill. We were supposed to be spending today debating that very important measure, but instead it was rejected for consideration altogether. Once again the Senate showed up for work but failed to earn its paycheck.

No matter what takes place in the coming November elections, I worry that more brinksmanship is in store next year unless we consider meaningful rules changes. We can disagree on what the solution is, and after listening to my Republican colleagues speaking on the floor yesterday, I think we agree on both sides of the aisle that the current system is broken.

The Senate is supposed to be the saucer that cools the drink. But to me it sometimes feels like an icebox where reasonable pieces of legislation get put in the permanent deep freeze.

And that's why we've been having these hearings. Over the course of the hearings, we have looked at a number of issues -- the development of the filibuster since the earliest days of the Senate; the growing challenges that the use -- and some would say abuse -- of the filibuster presents to the Senate; and the impact of the filibuster on nominations and other matters. Our last hearing in July examined filibuster-related legislation introduced by Senators Frank Lautenberg of New Jersey and Michael Bennet of Colorado. Today, we will look at two other resolutions that have been introduced to address concerns about abuse of the filibuster.

The two proposals we will examine are Senate Resolution 416, introduced by Senator Harkin, and Senate Resolution 619, introduced by Senator Tom Udall.

Senator Harkin has been a leader for more than a decade in trying to make the Senate function better and fulfill its purpose as a deliberative body. His resolution -- as I'm sure he will explain -- was first introduced more than a decade ago-when he and the Democrats were in the minority.

Senator Harkin's legislation contains what is known as a "ratchet" proposal, where the threshold to achieve cloture is decreased after successive cloture votes. It certainly is time for us to listen again to Senator Harkin's thoughts about how to make this institution better.

Senator Udall joined the Senate only this Congress, after distinguished service in the House of Representatives. But in less than two years, he also has become a strong and visible advocate for change. He has been to every filibuster hearing we've held and he has actively questioned almost every witness. As a new member of the Rules Committee, Senator Udall has urged this Committee to look seriously at the problems associated with the filibuster, and he is an advocate for the so-called "Constitutional option" as a way to change the Senate rules.

His current proposal, S. Res. 619, would express a "sense of the Senate" that "the Senate of each new Congress is not bound by the rules of previous Senates" under section 5 of article I of the Constitution.

On this issue, Senator Udall is following in the tradition of one of his distinguished predecessors -- Senator Clinton Anderson of New Mexico, whose seat Senator Udall holds. Back in the 1960's and 1970's, Senator Anderson argued in support of this same constitutional issue to the Senate.

Our second panel is composed of outside experts in Senate procedures and will include some familiar faces. Our first witness is Mimi Marziani, an attorney who works for the Brennan Center. Our second witness is Robert Dove, former Senate Parliamentarian, who also testified at our hearing on April 22nd; and our third witness is Professor Steven Smith of Washington University, who was a witness at our May 19th hearing. These panelists will share their thoughts about the context for the proposals introduced by Senators Harkin and Udall, and how they might work in practice.

Witnesses are asked to limit their remarks to five minutes. We will not have questions after the first panel, but we will have questions for our second panel. I also ask consent that after

the first panel, Senator Harkin be invited to join us on the Rules Committee dais to listen and ask questions of the second panel.

I look forward to listening to my colleagues and to the experts who have come to share their knowledge and experience with us. And now I turn to Ranking Member Bennett for his opening statement.